

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Henry C. King, Jr.

and

Case Number 95-03123

Names of Respondents

Hanover Sterling & Co., Ltd.,
Mark V. Antonucci,
Gene Phillips a/k/a Eugene Filippino,
Lowell Schatzer,
Joseph Belcastro and
Thomas E. La Rossa

REPRESENTATION OF PARTIES

Claimant, Henry C. King, Jr. was represented by Jan P. Garvin, Esq. of Pratt Financial Consulting located in Oklahoma City, OK.

Respondent, Hanover Sterling & Co., Inc. did not appear for the hearing or file an answer.

Respondent, Mark V. Antonucci was represented by Howard A. Tescher, of Kipnis, Tescher, Lippman, Calinsky & Kain located in Fort Lauderdale, FL.

Respondent Gene Phillips a/k/a Eugene Filippino was represented by Jim Scutti, Esq. of Jim Scutti, P.A. located in Boca Raton, FL.

Respondent, Lowell Schatzer was pro se' yet did not appear for the hearing.

Respondent, Joseph Belcastro was represented by Darren Lampart, Esq. of Lampert & Lampert located in New York, NY.

Respondent, Thomas E. La Rossa appeared pro se'.

CASE INFORMATION

The Statement of Claim was filed on or about June 15, 1995.

The Submission Agreement of Claimant, Henry C. King, Jr. was signed on June 16, 1995.

The Statement of Answer of Respondent, Mark Antonucci was filed on or about July 11, 1995.

The Statement of Answer of Respondent, Gene Phillips a/k/a Eugene Filippino was filed on or about March 21, 1996.

The Submission Agreement of Respondent, Gene Phillips a/k/a Eugene Filippino was signed on March 20, 1996.

A Joint Statement of Answer of Respondents, Lowell Schatzer and Joseph Belcastro was filed on or about August 8, 1995.

The Submission Agreement of Respondent, Joseph Belcastro was signed on August 8, 1995.

The Statement of Answer of Respondent, Thomas La Rossa was filed on or about November 1, 1995.

The Submission Agreement of Respondent, Thomas La Rossa was signed on September 9, 1995.

HEARING INFORMATION

The hearing was held on May 7, 1996 for two (2) sessions and on May 8, 1996 for two (2) sessions in Oklahoma City, OK.

CASE SUMMARY

In the Statement of Claim, Henry C. King, Jr. ("King") alleged that Hanover Sterling & Co., Ltd. ("Hanover Sterling"), by and through its employees, Mark V. Antonucci ("Antonucci"), a Registered Representative and Vice President, Gene Phillips a/k/a Eugene Filippino ("Phillips"), a Registered Representative and Vice President, Thomas La Rossa, the Office Manager, Lowell Schatzer, President, and Joseph Belcastro, CFO, breached their fiduciary duty to the Claimant. King alleged that Antonucci solicited him by telephone to open an account yet failed to analyze Claimant's financial status and risk tolerance. Claimant allegedly purchased 1000 shares of Physician Computer Network for \$6.00 per share on October 13, 1995 allegedly based on statements made by Antonucci. Claimant contended that Antonucci guaranteed a rise in the price of Physician Computer Network and stated that he would not charge a commission yet failed to add that he would receive in-house commissions since the firm was a market maker. Claimant further contended that he told Antonucci to sell the stock if the price fell to \$5.00 per share but

Antonucci failed to follow his instructions. As alleged, King did not authorize or intend to authorize the opening of a margin account and margin trading. Although King allegedly contacted Antonucci on several occasions to correct an entry of margin interest on his first statement, Antonucci failed to correct the error. According to the Claim, King purchased 1000 shares of L.A. Gear stock on January 13, 1995 based on statements and guarantees made by Antonucci in violation of SEC and NASD rules. Antonucci allegedly called on January 23, 1995 and spoke with the Claimant's wife who agreed to buy Panax stock at \$15.00 per share after Antonucci made assurances. However, the purchase was allegedly executed at \$15.75 per share. On January 25, 1995, Claimant bought 2,000 shares a \$2.43 per share of Eagle Vision, Inc. stock following a call from Antonucci during which he allegedly made statements in violation of SEC and NASD rules. King claimed that he did not authorize the purchase of 2000 warrants of American Toys, Inc. on approximately January 28, 1995 or the sales of 2000 shares of Eagle Vision, Inc at \$4.00 per share and 300 units of Panax at \$17.00 per share on or about February 6, 1995. Claimant made other specific allegations against the Respondents including, but not limited to, failure to supervise, unsuitability, fraud and failure to disseminate prospectuses and SEC approved material.

In his Statement of Answer, Mark Antonucci denied the allegations of wrongdoing set forth in the Statement of Claim. Antonucci specifically stated that he was not an officer or director of Hanover Sterling. Antonucci maintained that he was only responsible for those transactions where he directly spoke with King and was given authorization including the opening of the account and the purchase of a Physician Computer Network. Antonucci asserted that King failed to state a claim upon which relief may be granted.

Gene Phillips a/k/a Eugene J. Filippino denied the allegations made by the Claimant. Phillips asserted many affirmative defenses including, but not limited to, failure to state a claim, Phillips had no substantive communication with King, Phillips was not a corporate officer, Phillips had no supervisory authority over Antonucci, Claimant does not specify any instances of misconduct which relate to Phillips and the Statement of Claim is frivolous as it related to Phillips.

In their Answer, Lowell Schatzer and Joseph Belcastro denied any and all liability to Claimant alleging that they properly discharged their duties and responsibilities and acted in accordance with applicable law as well as accepted industry standards and practices. Schatzer and Belcastro denied being control persons and asserted that Claimant failed to state a claim upon which relief may be granted, Claimant's losses, if any, were caused or contributed to by Claimant's own fault or conduct and Claimant was barred from recovery for failure to timely object as required by the contractual language set forth in confirmation notices.

Respondent, Thomas La Rossa denied the allegations in the Statement of Claim. La Rossa asserted several affirmative defenses including, that he never spoke with Claimant, Claimant was barred from recovery by his failure to timely object to the transactions as required in confirmation notices, Claimant's losses, if any, were caused or contributed to by Claimant's own fault or

conduct, Claimant failed to state a claim upon which relief can be granted and Claimant alleged no wrongdoing by La Rossa.

RELIEF REQUESTED

Claimant requested an award in the amount of \$17,344.00 in actual damages, \$240.00 in lost income, and \$25,000.00 in punitive damages as well as costs, expenses and attorneys' and expert witness fees.

Respondent, Mark Antonucci requested that the Statement of Claim be denied in its entirety and that he be awarded costs, expenses and attorneys' fees.

Respondent, Gene Phillips a/k/a Eugene Filippino requested that the claims asserted against him be denied in its entirety and that he be awarded his costs and attorneys' fees.

Respondents, Lowell Schatzer and Joseph Belcastro requested that the claims asserted by the Claimant be dismissed in their entirety.

Respondent, Thomas La Rossa requested that the claims of Henry C. King, Jr. be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents, Hanover Sterling & Co., Ltd. and Lowell Schatzer have been properly served with the Statement of Claim pursuant to Section 13 and Section 25 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents, Hanover Sterling & Co., Ltd. and Lowell Schatzer received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondents, Hanover, Sterling & Co., Ltd. and Lowell Schatzer did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and/or testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

Respondent, Joseph Belcastro submitted a Motion to Dismiss pursuant to Section 16 of the Code dated May 1, 1996. After reviewing all relevant documents, the arbitrators determined that the motion was granted.

On June 18, 1996, the National Association of Securities Dealers, Inc. received notification advising that Respondent, Mark Antonucci filed a Chapter 7 Petition of Bankruptcy in the U.S.

Bankruptcy Court, Southern District of Florida on June 17, 1996. Respondent, Mark Antonucci was removed as a party in this action due to the automatic stay in effect as a result of the bankruptcy filing.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered. The parties present at the hearing have also agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Hanover Sterling & Co., Ltd., Gene Phillips a/k/a Eugene J. Filippino and Lowell Schatzer are hereby, jointly and severally, liable for and shall pay to the Claimant, Henry C. King, Jr. the sum of \$13,846.00 in actual damages;
2. Respondents, Hanover Sterling & Co., Ltd., Gene Phillips a/k/a Eugene J. Filippino and Lowell Schatzer are hereby, jointly and severally, liable for and shall pay to the Claimant, Henry C. King, Jr. the sum of \$12,000.00 in punitive damages. In determining to award punitive damages, the arbitrators considered the pleadings and the evidence;
3. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein; and
4. Any requests for relief not specifically granted are hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$400.00 per hearing session. There were four (4) sessions x \$400.00 = \$1,600.00 in forum fees. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$120.00 and shall retain as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant, Henry C. King, Jr. Respondents, Hanover Sterling & Co., Ltd., Gene Phillips a/k/a Eugene J. Filippino and Lowell Schatzer are hereby, jointly and severally, liable for and shall pay to Claimant, Henry C. King, Jr. the amount of \$520.00 as reimbursement.

Respondents, Hanover Sterling & Co., Ltd., Gene Phillips a/k/a Eugene J. Filippino and Lowell Schatzer are hereby, jointly and severally, liable for and shall pay to the NASD the sum of \$1,200.00 in additional forum fees.

The NASD shall retain postponement fees in the amount of \$400.00 previously deposited with the NASD by the Respondent, Gene Phillips a/k/a Eugene Filippino. Respondent, Hanover, Sterling & Co., Ltd. is hereby liable for and shall pay to the NASD the sum of \$200.00 for the member surcharge assessed in accordance with Section 45 of the Code.

Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrators' Signatures:

Dated:

Dennis S. Boxeur, Esq.
Dennis S. Boxeur, Esq.
Public Arbitrator, Presiding Chair

June 24, 1996

Thomas A. Bamberger, Esq.
Thomas A. Bamberger, Esq.
Public Arbitrator

June 28, 1996

Thomas J. Cotrone, FA
Thomas J. Cotrone, FA
Industry Arbitrator

July 16, 1996

Date served by the NASD: July 16, 1996